

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ADAM BROWN, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

LEARFIELD COMMUNICATIONS, LLC *et*
al.,

Defendants.

Case No. 1:23-cv-00374-DAE

Hon. David A. Ezra

**UNITED STATES OF AMERICA’S
UNOPPOSED MOTION FOR EXTENSION OF TIME**

On June 9, 2023, Defendants Learfield Communications, LLC and Sidearm Sports, LLC filed a Notice of Constitutional Question in this matter pursuant to Federal Rule of Civil Procedure 5.1(a). ECF No. 23. In that Notice, Defendants state that their Motion to Dismiss Plaintiff’s Complaint, *see* ECF No. 1, “questions the constitutionality of the federal Video Privacy Protection Act [VPPA], 18 U.S.C. § 2710,” and specifically argues “that the VPPA is an unconstitutional restraint on speech in violation of the First Amendment of the United States Constitution.” ECF No. 23 at 1.

The United States is authorized to intervene in any federal court action in which the constitutionality of an Act of Congress is drawn into question. 28 U.S.C. § 2403(a). Counsel for the United States respectfully advises the Court that the United States has not yet decided whether to intervene in this action to defend the constitutionality of the VPPA. The approval of the Solicitor General is required for the United States to intervene in an action to defend the constitutionality of a federal statute, *see* 28 C.F.R. § 0.21, and that approval process often takes several weeks.

Pursuant to Rule 5.1, the current deadline for the United States to intervene is August 8, 2023. However, notice of this constitutional challenge only recently came to the attention of the component of the Department of Justice responsible for recommending to the Solicitor General whether intervention is warranted, including undersigned counsel, who was traveling on government business last week.

Because the government only recently became aware of this matter and because the approval process often takes several weeks, the United States respectfully requests that the Court set the deadline for the United States to decide whether to intervene for the limited purpose of defending the constitutionality of the VPPA for 60 days from the date of this request, up to and including August 29, 2023. This request, if granted, would provide the United States with an additional twenty-one days beyond the current deadline of August 8, 2023. If the United States decides to intervene, it will be prepared to file its notice of intervention and accompanying memorandum in defense of the constitutionality of the statute no later than August 29, 2023.

The present extension is requested for good cause and is not intended to cause undue delay or otherwise prejudice any party. Undersigned counsel for the United States has conferred with counsel for Plaintiff and counsel for Defendants, who do not oppose the government's request for an extension of time. The United States has not previously requested any extension of time in this matter.

Date: June 30, 2023

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
Civil Division

LESLEY FARBY
Assistant Branch Director

Civil Division, Federal Programs Branch

/s/ Bonnie E. Devany

BONNIE E. DEVANY

Trial Attorney (Tex. Bar No. 24131173)

United States Department of Justice

Civil Division, Federal Programs Branch

1100 L Street, NW

Washington, DC 20005

Telephone: (202) 616-8101

Email: bonnie.e.devany@usdoj.gov

Counsel for United States

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants for this matter.

/s/ Bonnie E. Devany
BONNIE E. DEVANY